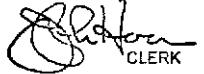


FILED
JUN 30 2006

CLERK

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

* UNITED STATES OF AMERICA, * CIV 06-4033
* Plaintiff, *
* -vs- * MEMORANDUM OPINION AND
* \$9,650.00 in UNITED STATES * ORDER RE: ADDITIONAL
* CURRENCY, * PUBLICATION OF NOTICE AND
* * TIME FRAME FOR RESPONSIVE PLEADINGS
* Defendant. *
*

The United States of America filed and served the Summons, Warrant for Arrest and Verified Complaint in this civil in rem forfeiture action under 21 U.S.C. § 881. The Certificate of Service discloses that these documents were served upon Cesar Sarmiento, upon Cesar Sarmiento's defense counsel in his criminal action (CR. 05-40064-01), Attorney Melissa Nicholson, and also upon Elizabeth Sarmiento. Doc. 8.

Cesar Sarmiento, through Attorney Melissa Nicholson, has filed a Motion for Court-Appointed Attorney, or in the alternative, clarification that Attorney Melissa Nicholson is not Cesar Sarmiento's attorney of record in this forfeiture proceeding. Doc. 10. In her supporting affidavit, Attorney Melissa Nicholson has also requested the "Defendant or counsel be granted an extension to answer and not be penalized, for any lack of answer until this question as to counsel is answered."

The Sixth Amendment right to counsel does not apply to civil forfeiture proceedings. See *United States v. \$100,375.00 in U.S. Currency*, 70 F.3d 438, 440 (6th Cir. 1995); *United States v. \$292,888.04 in U.S. Currency*, 54 F.3d 564, 569 (9th Cir. 1995). Therefore, this Court is denying the request for appointment of counsel and stating that Attorney Melissa Nicholson has at no time been counsel of record for Cesar Sarmiento in this forfeiture proceeding.

On June 9, 206, this Court entered an Order to Publish Notice of Forfeiture in the Laredo Morning Times, a newspaper of general circulation at Laredo, Texas. Doc. 9. While publication in the Laredo Morning Times is appropriate since defendant property was seized from a residence in Laredo, Texas, this Court concludes that further publication of notice of forfeiture is required to

comply with Rule C(4) of the Supplemental Rules for Certain Admiralty and Maritime Claims. Rule C(4) requires that the United States "give public notice of the action and arrest in a newspaper designated by court order and having general circulation in the district." The Court is ordering that the United States also publish notice of this forfeiture in the Sioux Falls Argus Leader. Any person who asserts an interest in or right against the property that is the subject of this forfeiture shall have until 30 days of completed publication of notice of this forfeiture in the Sioux Falls Argus Leader to file his or her verified statement identifying the interest or right within. Such person must serve and file an answer within 20 days after filing the statement of interest. *See* Rule C(6)(a)(i)(B)(iii) of the Supplemental Rules for Certain Admiralty and Maritime Claims Accordingly,

IT IS ORDERED :

- (1) that the request for appointment of counsel is denied and the Court states that Attorney Melissa Nicholson has at no time been counsel of record for Cesar Sarmiento in this forfeiture proceeding;
- (2) that the United States also publish notice of the forfeiture in this case in the Sioux Falls Argus Leader; and
- (3) that any person who asserts an interest in or right against the property that is the subject of this forfeiture shall have until 30 days of completed publication of notice of this forfeiture in the Sioux Falls Argus Leader to file his or her verified statement identifying the interest or right within.

Dated this 30th day of June, 2006.

BY THE COURT:



Lawrence L. Piersol
United States District Judge

ATTEST:

JOSEPH HAAS, CLERK

BY: Shelly Margulies
DEPUTY